

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1178670  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Alvin SMITH

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1892

Alvin SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 18 March 1971, an Administrative Law Judge of the United States Coast Guard at Galveston, Texas, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as cook on board SS STEEL ADVOCATE under authority of the document above captioned, on or about 23 January 1971, Appellant assaulted and battered with a dangerous weapon, to wit: a meat fork, a member of the crew, John O. Harrell.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of STEEL ADVOCATE and the testimony of Harrell and his attending physician.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to the Appellant.

The entire decision was served on 20 March 1971. Appeal was timely filed and was perfected on 4 January 1972.

FINDINGS OF FACT

On 23 January 1971, Appellant was serving as cook on board SS STEEL ADVOCATE and acting under authority of his document while the ship was in the port of Galveston, Texas.

Shortly before 1700 on that date, while preparing the serve the evening meal, Harrell, a messman on his first foreign voyage as a merchant seaman, angered Appellant by asking when the meal would be ready to serve. In the course of reviling Harrell, Appellant left the stove where he was working, approached Harrell, and stabbed him in the chest with a two pronged fork.

The two tines of the fork were about three to three and a half inches long. The wounds they caused were from one to two inches deep because they inflamed the pericardium and the pleura of the left lung.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

- (1) There is no proof that the fork was a dangerous weapon; thus, the finding should have been only of assault and battery;
- (2) The evidence against Appellant was insufficient in that Harrell had been drinking and not all possible witnesses were called to testify;
- (3) Appellant was denied due process of law under the Constitution since Appellant was deprived of a property right without due process; and
- (4) The order is too severe in view of Appellant's prior good record.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

The argument that there was no proof that the fork used was a dangerous weapon seems to assume that some extrinsic and rigid rule must be separately applied to stamp a weapon as dangerous.

It is true that the fork was not produced at the hearing but it was adequately described. The wounds were also adequately described. Appellant claimed that Harrell walked into the fork so that the wounds could not have been more than an inch. He raises, for the first time, on appeal, the fancy that it was such a "minor" injury that had been presented to the duty doctor at the Galveston USPHS hospital on the night of 23 January and Harrell, in an

attempt to build a better claim against the ship operator, somehow enlarged the wounds before he returned to the hospital the next day. No time need be wasted on this theory.

The wounds observed and treated by the attending physician correspond, without fear of intervening tampering, with what would have been produced by a thrust of the fork.

The "dangerous" quality of any weapon is inferable from its potentialities and the way it is used. The fork used here was, in legal contemplation, a dangerous weapon.

## II

Any witness available to the Investigating Officer was equally available to Appellant who had been advised of his right to subpoena witnesses. Included was the physician on duty at the hospital when Harrell first reported there. Although the hearing was actually held at the hospital, Appellant made no attempt to call him. Among other things, this leads to a well founded belief that any idea of Harrell's somehow having enlarged his wounds was completely arriere pensee.

Having failed to call a single witness for the hearing, Appellant cannot complain that someone else did not call the witnesses Appellant may now say he then desired.

## III

While, circularly expressed, Appellant's third argument, even if straightened out, has no foundation.

Without discussion of whether possession of a merchant mariner's document is a property right or the Fourteenth Amendment has any relevancy at all, Appellant has not specified or even hinted at one right to which he was entitled in this administrative hearing which was denied to him.

## IV

The fact that Appellant had no prior record was brought out in open hearing and was specifically referred to when the administrative law judge gave his reasons for his order. The reasons were sufficient and the order was appropriate. Violence that causes injury and could easily have resulted in death merits nothing less than an order of revocation.

## ORDER

The order of the Administrative Law Judge dated at Galveston, Texas, on 18 March 1971, is AFFIRMED.

C. R. BENDER  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D.C., this 19th day of October 1972.

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